84-1997
No.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GEORGE BOBIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE ILLINOIS APPELLATE COURT,
FIRST DISTRICT

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QUESTION PRESENTED

1. Whether the decision of the Illinois Appellate Court impermissibly interchanged sanity and intent as elements of the offense of attempted murder, thereby relieving the prosecution of having to prove a requisite element of the offense, a decision in conflict on a federal question of due process with applicable decisions of this Court.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1984

GEORGE BOBIS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE ILLINOIS APPELLATE COURT
FIRST DISTRICT

PRAYER

Petitioner, George Bobis, respectfully prays that a Writ of Certiorari issue to review the judgement and order of the Illinois Appellate Court, First District.

OPINIONS BELOW

The Opinion and Order of the Illinois Appellate Court, First District, appears in Appendix A, attached hereto. The Order of the Illinois Appellate Court, First District, denying a Petition for Rehearing appears in Appendix B, attached hereto. The notice of the Illinois Supreme Court denying Petitioner's Petition for Leave to Appeal appears in Appendix C, attached hereto.

JURISDICTION

The order of the Illinois Appellate Court, First District was entered on October 30, 1984. Petitioner filed a Petition for Rehearing, which was denied in an order entered on December 3, 1984. On April 2, 1985 the Illinois Supreme Court denied Petitioner's Petition for Leave to Appeal. This Petition is filed within sixty days of the Illinois Supreme

Court's denial of leave to appeal, and jurisdiction is invoked under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISION INVOLVED

The 14th Amendment to the United States Constitution is herein involved. The 14th Amendment provides, in pertinent part:

"No state shall make or force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; or deny to any person within this jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner, George Bobis, was indicted in Cook County, Illinois for attempted murder, armed violence and aggrevated battery in violation of Illinois Revised

Statutes, Ch. 38,§8-4 and 12-4. The indictment was based on Petitioner's shooting of his wife during their separation.

Petitioner, George Bobis, after a brief courtship, married Louise Bobis, who is twelve years his junior. After the marriage, Petitioner's business collapsed and his wife became the family's means of financial support. The marriage began to deteriorate and Petitioner started exhibiting unfounded jealousy. Finally, Petitioner and his wife decided to separate on a particular day. On the day before the day scheduled for separation, Petitioner, on arriving home, found his house stripped and his wife and her friends and family moving the house's contents out.

A violent argument erupted between Petitioner and his wife. During the course of the argument, Petitioner, who had become extremely angry, shot his wife

twice. He then sought medical attention for her.

At trial Petitioner raised the defense of insanity. Petitioner presented the testimony of a psychiatrist, Dr. Ziporyn, who testified that at the time of the shooting, Petitioner could not control his actions. The State, in rebuttal, introduced testimony of a psychologist and psychiatrist, each of whom examined Petitioner once briefly.

At the conclusion of trial the Judge found Petitioner to have been sane and pronounced Petitioner guilty of attempted murder and armed violence. On appeal, Petitioner raised three issues, two contesting the finding of sanity and one attacking the State's failure to prove the requisite specific intent for a charge of attempted murder. In disposing of the appeal the Illinois

Appellate Court addressed the issues attacking the finding of sanity but wholly failed to address the issue of the requisite specific intent for attempted murder.

REASON FOR GRANTING THE WRIT

The decision of the Illinois Appellate Court impermissibly interchanged sanity and intent as elements of the offense of attempted murder, thereby relieving the prosecution of having to prove a requisite element of the offense, a decision in conflict on a federal question of due process with applicable decisions of this Court.

Due process , guaranteed to all citizens under the 14th Amendment to the United States Constitution, imposes an obligation on the charging sovereign to prove each element of an offense beyond a reasonable doubt before criminal sanctions can be

imposed. In Re Winship, 397 U.S. 358, 364 (1970).

Petitioner was charged with attempted murder, which is a specific intent crime under Illinois law. Illinois Revised Statutes, Ch. 38,§8-4; People v. Gilman, 113 Ill. App. 3d 73, 446 N.E. 2nd 595 (1983). Yet, because Petitioner raised a defense of insanity, the trial court absolved the State of any obligation to prove the requisite intent beyond a reasonable doubt. Once the court entered a finding of sanity, the court did not asses whether the State also proved that Petitioner intended to commit murder. Yet, a review of the evidence, in a light most favorable to the State, proved that Petitioner Bobis was deeply, irrationally angry with his wife, and therefore guilty of a lesser included offense and not attempted murder.

The confusion between concepts of sanity and intent is reflected in the Illinois Appellate Court's failure to even address the issue of intent on appeal. The Court restricted itself to addressing the issues of sanity. Eradication of a trend in the courts to blend the concepts so that the State no longer has to prove intent when an insanity defense fails is a crucial federal issue as it implicates fundamental notions of due process.

CONCLUSION

For the foregoing reason, Petitioner respectfully prays this Honorable Court issue it's Writ of Certiorari to review the judgement and order of the Illinois

Appellate Court, First District.

Respectfully submitted,

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APPENDICES

APPENDIX A

Second Division
October 30, 1984

No. 83-2526

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal From The Circuit Court of Cook County.
Plaintiff-Appellee,	)	
vs.	)	Honorable: Dwight McKay, Judge Presiding.
GEORGE N. BOBIS,	)	
Defendant-Appellant.	)	

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Defendant, George Bobis, was convicted at a bench trial of attempted murder, armed violence, and two counts of aggravated battery. (Ill. Rev. Stat. 1983, ch. 38, parts. 8-4, 12-4(a), 12-4(b-1).) At trial, he asserted the defense of insanity. On appeal, defendant contends that the trial court erred in holding that he was sane beyond a reasonable

doubt.

The charges against defendant arose out of his having shot his wife, Louise, on April 23, 1982. Due to a breakdown in marital relations, Louise arranged to move out of their home. Defendant confronted her while she was in the process of moving. Harsh words were exchanged and the confrontation became physical. Louise testified that George grabbed her, wrestled her onto the kitchen floor and pulled her by the hair to their second floor bedroom. George testified that Louise was accidently bumped and followed him up the stairs. In the bedroom, defendant drew a handgun from his dresser and fired one shot point blank into his wife's fact and another into her head.

At trial, defendant called Dr. Marvin Ziporyn, a psychiatrist, who testified that he had diagnosed defendand as having

a borderline personality disorder. Under this diagnosis, Dr. Ziporyn concluded that defendant could appreciate the criminality of his conduct, but was unable to conform his conduct to the law. In rebuttal, the State called Dr. Lisa Grossman, a psychologist, and Dr. Gilbert Bogen, a psychiatrist, who both testified that they had diagnosed defendant as having a narcissistic personality. Dr. Bogen testified further that defendant could appreciate the criminality of his conduct and could conform his conduct to the law. In addition to this expert testimony, the State presented lay testimony and stipulations to lay testimony indicating that defendant was sane prior to and after the crime.

The circuit court in reaching its decision asserted that the testimony of Drs. Ziporyn, Bogen and Grossman was

crucial to resolving the issue of defendant's sanity. The court found that the defense of insanity had not been established, held that defendant was sane, and found defendant guilty on all four counts.

Thereafter, defendant moved for a new trial. During the hearing on this motion, counsel for the State and the defense reviewed their respective positions and the evidence in support thereof. The circuit court commented on Dr. Ziporyn's use of the word "borderline" in his diagnosis, and state that the word "*** doesn't add any certainty to whether or not the defendant at the moment he fired the weapon was out of control or insane***. I find him to have been sane. He acted like a man in anger acted. He was angry at his wife and he shot her." Defendant insists that the court labored under a fundamental misunderstanding of

the psychiatric diagnosis of borderline personality disorder, which led the court to conclude that defendant was sane. The defense relies upon the classification of borderline personality disorder as a recognized mental disorder in the American Psychiatric Association's publication, The Diagnostic and Statistical Manual of Mental Disorders, and Dr. Ziporyn's explanation of why defendant's mental condition should be so classified, in asserting that the trial court's comment about "borderline" demonstrated its profound misunderstanding, resulting in plain error. We disagree.

At trial, Drs. Ziporyn and Bogen described in considerable detail the characteristics of a borderline personality disorder. Although Dr. Ziporyn gave reasons as to why defendant was do diagnosed, Dr. Bogen discounted that

possibility, stating that defendant was able to hold down a job and his life was orderly, whereas a person having a borderline personality disorder is disorganized and leads a chaotic life and also has mood swings which can lead to self-mutilation and suicide. No such tendencies are identified in defendant's personality. Dr. Bogen also testified that in the absence of psychosis in defendant's history, he could not be classified as having a borderline personality disorder. Defendant had no history of psychosis, had never been in a mental hospital and had never seen a psychiatrist prior to the shooting. By stipulation, his mother-in-law stated that two days before the shooting his appearance and speech were normal. He had worked for her almost every day for a week, two weeks before the shooting and she saw

him for periods of up to 8 hours per day finding nothing unusual about his mood or conversations. It was stipulated that Louise would testify that while she was married to defendant, he was sane. Defendant's written motion for a new trial set forth in considerable detail and analysis the defense view of the evidence and its application to the theory of the defense as well as the purported failure of the State's position. Included in that motion was a further examination and discussion of borderline personality disorder. Much of this evidence was reviewed by counsel during the post-trial hearing, in addition to other evidence, and by the court in arriving at its conclusion. The court simply did not believe that defendant's condition was such that he could not conform his conduct to the requirements of law. We find no

error in its having so concluded.

Once a defendant raises a reasonable doubt of his sanity, the burden of proof shift to the State to prove legal sanity beyond a reasonable doubt. (People v. Foster (1979), 76 Ill. 2d 365, 378-79, 392 N.E.2d 6; People v. Arndt (1980), 86 Ill. App. 3d 744, 408 N.E.2d 757.) (Effective in trials commencing on and after January 1, 1984, that burden is shifted to defendant to prove insanity by a preponderance of evidence. Ill. Rev. Stat. 1983, ch. 38, pars. 3-2, 6-2) The circuit court's finding as to that issue should not be disturbed by a reviewing court unless it was so manifestly against the weight of the evidence as to demonstrate that it was based on passion or prejudice. (People v. Ford (1968), 39 Ill. 2d 318,235 N.E.2d 576; People v. Ware (1980), 88

Ill. App. 3d 115, 410 N.E.2d 357), or was so unsatisfactory or improbable that a reasonable doubt of defendant's insanity was raised (People v. Jones (1982), 109 Ill. App. 3d 120, 440 N.E.2d 261; People v. Brown (1982), 104 Ill. App. 3d 1110, 433 N.E.2d 1081). This difficult standard was not met in this case. In expressing the firm belief in defendant's sanity, the circuit court had a sufficient evidentiary basis upon which to discount the defense expert's testimony and accept the testimony of the State's experts. (People v. Taylor (1982), 110 Ill. App. 3d 112, 441 N.E.2d 1231; People v. Meeker (1980), 86 Ill. App. 3d 162, 407 N.E.2d 1058). The State's witnesses were qualified and credible. It was within the circuit court's discretion to accept the opinions of one set of experts over another with respect to the issue of

insanity. People v. Alerte (1983), 120 Ill. App. 3d 962, 968, 458 N.E.2d 1106, appeal denied (1984), 101 Ill. 2d (28).) We cannot say that the circuit court's finding of sanity was unsatisfactory, improbable or against the weight of the evidence. People v. Jones, supra; People v. Brown, supra.

Accordingly, the judgment of the circuit court is affirmed. Dated at Chicago, Illinois, this 30th day of October, 1984.

HARTMAN, P.J., STAMOS and PERLIN, JJ.

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff-Appellee,	)	
vs.	)	No. 83-2526
GEORGE BOBIS,	)	
Defendant-Appellant.	)	

ORDER

Defendant-Appellant's petition for rehearing is hereby denied.

/s/
Allen Hartman, Presiding Justice

/s/
John J. Stamos, Justice

/s/
Maurice Perlin, Justice

Dated: December 3, 1984

APPENDIX C

61286 ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, IL 62706
(217) 782-2035

April 2, 1985

Ms. Maren J. Dougherty
Genson & Steinback
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Chicago, IL 60603

No. 61286 - People of the State of Illinois, respondent, v. George N. Bobis, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 23, 1985.

Supreme Court, U.S.
FILED
AUG 8 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1997

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GEORGE BOBIS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Illinois Appellate Court, First District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the Illinois Appellate Court impermissibly interchanged sanity and intent as elements of the offense of attempt murder, thereby relieving the prosecutor of having to prove a requisite element of the offense of attempt murder.

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In The

Supreme Court of the United States

October Term, 1984

GEORGE BOBIS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Illinois Appellate Court, First District

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

On June 8, 1982, petitioner was charged in the Circuit Court of Cook County, Illinois, with attempt murder, armed violence and two counts of aggravated battery for the shooting of his wife. At his bench trial petitioner raised the defense of insanity. The trial court found that the State had proven beyond a reasonable doubt that petitioner was sane at the time the offense occurred. The trial court then found petitioner guilty of all four offenses and sentenced him to two concurrent terms of 15 years imprisonment.

Petitioner's convictions were affirmed on direct appeal by the Appellate Court of Illinois, First District, in an unpublished order pursuant to Illinois Supreme Court Rule 23, 87 Ill.2d 275, R. 23, a copy of which is attached to the petition. The Illinois Supreme Court denied leave to appeal.

The facts underlying the convictions are adequately set forth in the Appellate Court's order, and need not be restated here. Respondent directs this Court's attention to the argument portion of this brief, wherein the pertinent facts are discussed.

REASON FOR DENYING THE WRIT

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED, SINCE THE QUESTION PETITIONER SEEKS TO HAVE REVIEWED INVOLVES NO MORE THAN THE APPLICATION OF WELL-SETTLED CONSTITUTIONAL PRINCIPLES TO THE FACTS OF THIS CASE.

The decisions of this Court have firmly established that the due process clause requires proof beyond a reasonable doubt to support a conviction for a criminal offense, *In Re Winship*, 397 U.S. 358 (1970), and that on review, a verdict of guilt must be affirmed if, viewing the evidence as a whole and in the light most favorable to the prosecution, any rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *Moore v. Duckworth*, 443 U.S. 713 (1979). Petitioner asserts that the Appellate Court impermissibly substituted the element of intent in the offense of attempt murder with a finding of sanity.

This in turn, petitioner argues, relieved the prosecution of proving beyond a reasonable doubt that petitioner had the specific intent to murder his wife. This novel interpretation of the Appellate Court's order is lacking in merit and does not warrant the expenditure of this Court's time to deal with the question.

Initially, the question presented to this Court was not presented to the Illinois Appellate Court in petitioner's petition for rehearing. (See Appendix A) There, petitioner's argument was: "[t]he order entered by this Honorable Court on October 30, 1984, ignored Defendant's argument that the State failed to prove beyond a reasonable doubt that George Bobis had the requisite specific intent to sustain a charge of attempted murder." (App. A.) No argument was made that the Appellate Court substituted a finding of sanity for the element of intent, thereby relieving the prosecution from proving the latter beyond a reasonable doubt. Indeed, nothing in the Appellate Court's order would support such an order. That court merely did not decide the issue of whether the State had proven the intent element beyond a reasonable doubt, but rather dealt with the issue of whether the trial court abused its discretion in finding that the State had proved beyond a reasonable doubt that petitioner was sane at the time the offense occurred. Thus, the gravaman of petitioner's complaint is not the question as now presented but, rather, whether the evidence was sufficient to prove that petitioner was guilty of attempt murder beyond a reasonable doubt. He asks this Court to grant certiorari for the sole purpose of applying well-settled constitutional principles to the facts of his case. The question he presents turns entirely on the facts, and is of interest only to the parties. Review of such questions is not the purpose to be served by a grant of certiorari. As Justice

Holmes once observed, "[w]e do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925). *Accord, Texas v. Mead*, ____ U.S. ____, 104 S.Ct. 1318, 1320, 796 L.Ed.2d 714, 716 (1984) (opinion of Stevens, J., respecting the denial of certiorari). Thus, respondent submits that no substantial federal question is presented for review.

Moreover, it is clear that petitioner is guilty of attempt murder. On the day in question petitioner was informed by a friend that people were moving furniture from his house. Petitioner and his wife had agreed to a divorce but she was not to move out until the next day. (R. 185) Upon arriving at his home petitioner and his wife struggled in the kitchen. Petitioner then dragged his wife to their upstairs bedroom, pushed her on the floor and sat on her. (R. 38) He then reached into his dresser and pulled out a .357 magnum. (R. 39, 120) His wife put her hands in front of her face and said, "Please, George, don't hurt me." (R. 39) Pushing her hands away, petitioner drew the gun down and said, "If I can't have you, nobody else will." (R. 39) Petitioner then put the gun to the tip of her nose and shot her. The petitioner then picked her head up and fired another bullet into the back of her head. (R. 40) From these facts it is obvious defendant intended to kill his wife. The trial court concluded, "[H]e acted intentionally and he intended to kill his wife." (R. 430) Under these circumstances, it is far from irrational to conclude that attempt murder was proved beyond a reasonable doubt. The petition for a writ of certiorari should be denied.

CONCLUSION

WHEREFORE, for all the foregoing reasons respondent prays that this Honorable Court deny the instant petition for a writ of habeas corpus.

Respectfully submitted,

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APPENDIX A

NO. 83-2526

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
(Filed November 20, 1984)

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

-vs-

GEORGE BOBIS,

Defendant-Appellant.

PETITION FOR REHEARING

I.

STATEMENT OF THE CASE

Judgment affirming Defendant George Bobis' conviction on four counts was entered by this Honorable Court on October 30, 1984. Defendant's petition for rehearing is timely filed pursuant to Illinois Supreme Court Rule 367 and stays issuance of the mandate.

II.

POINT ON REHEARING

The order entered by this Honorable Court on October 30, 1984 ignored Defendant's argument that the State failed to prove beyond a reasonable doubt that George

Bobis had the requisite specific intent to sustain a charge of attempted murder.

George Bobis, after shooting his wife, Louise, was convicted on a four-count information with attempted murder, armed violence and two counts of aggravated battery. The central issue presented at trial was whether George Bobis was sane at the time he shot his wife. On appeal, George Bobis raised the issue of his sanity and the issue of whether, assuming he was sane, he had the requisite intent to commit murder. In the opinion of October 30, 1984, this Honorable Court addressed the issue of sanity but wholly ignored the alternative argument of whether the State proved beyond a reasonable doubt that George Bobis had the requisite intent to commit murder. (Appellant's Brief, pages 18-19).

At trial, the three expert witnesses agreed that George Bobis had a mental disorder. The experts disagreed, however, as to the severity and diagnosis of that disorder. The experts for the State classified George Bobis as having a narcissistic personality. Mr. Bobis' treating physician diagnosed him as having a borderline personality disorder. One characteristic of both diagnoses, however, was the low threshold of frustration and anger.

In this case, George Bobis was deeply angry with his wife at the time of the shooting. But the evidence failed to establish beyond a reasonable doubt that he had the conscious objective or purpose to accomplish murder, which is necessary to sustain a conviction for attempted murder. The lack of conscious objective or purpose to accomplish murder is clear from the evidence. George Bobis, after shooting Louise, carried her downstairs and immediately sought medical attention for her. He called the paramedics. Further, George put Louise in the car and started

driving towards the hospital. When stopped by the police, George repeatedly stated that he was trying to get Louise to the hospital. (R. 108, 109, 121, 40, 42).

The failure of the State to prove that George Bobis had the requisite conscious objective or purpose to commit murder requires reversal of his conviction for attempted murder.

Defendant Bobis requests that this Honorable Court address this issue, which was presented on appeal and overlooked in this Court's opinion.

Respectfully submitted,

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